IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 28TH MARCH 2007 / 7TH CHAITHRA 1929

OP.No. 32573 of 2002(C)

PETITIONER:

ELSY ANTONY W/O. LATE NAIK ANTONY.P.D.,
(NO.6868365), PANAYAPARAMBIL HOUSE,
VAZHAKKULAM P.O., MUVATTUPUZHA, ERNAKULAM DISTRICT

BY ADV. SRI.GRASHIOUS KURIAKOSE
SRI.GEORGE MATHEWS
SRI.B.PRAMOD

RESPONDENTS:
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1. UNION OF INDIA, REPRESENTED BY THE
SECRETARY, MINISTRY OF DEFENCE,
CENTRAL SECRETARIAT, NEW DELHI.

2. THE RECORD OFFICER, CROPS OF MILITARY
POLICE RECORDS, BANGALORE.

3. THE SECRETARY, ZILLA SAINIK WELFARE
OFFICE, CIVIL STATION, KAKKANADU, ERNAKULAM.

BY ADV. SRI.THOMAS KOSHY, ADDL.CGSC FOR R1 & R2
SRI.JOHN VARGHESE, ASSISTANT SG

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 21/03/2007, THE COURT ON 28/3/2007 DELIVERED THE FOLLOWING:

OP 32573/02

APPENDIX

PETITIONER'S EXTS:

EXT.P1 TRUE COPY OF THE CERTIFICATE DT. 7.8.73 ISSUED BY THE ASST. RECORD OFFICER, RECORDS CORPS OF MILITARY POLICE, FAIZABAD.

EXT.P2 TRUE COPY OF THE CERTIFICATE DT. NIL SHOWING THE PARTICULARS OF THE DECEASED SOLDIER(PETITIONER'S HUSBAND)

EXT.P3 TRUE COPY OF THE LETTER DT. 3.8.72 SENT BY THE OFFICER COMMDING I CORPS PROVOST UNIT C/O. 56 APO TO THE EMPLOYMENT OFFICER,ERNAKULAM.

EXT.P4 TRUE COPY OF THE CERTIFICATE DT. 29.3.99 ISSUED BY THE 3RD RESPONDENT.

EXT.P5 TRUE COPY OF THE G.O.(Rt)2978/76/FD DT.20.5.76.

EXT.P6 TRUE COPY OF THE IDENTITY CARD ISSUED TO THE PETITIONER BY THE 3RD RESPONDENT.

EXT.P7 TRUE COPY OF THE APPLICATION DT.23.11.99 FILED BY THE PETITIONER.

EXT.P8 TRUE COPY OF THE LETTER DT. 4.12.99 ISSUED BY THE 2ND RESPONDENT.

EXT.P9 TRUE COPY OF THE NEWS ITEM DATED 16.11.99 IN MALAYALA MANORAMA DAILY.

EXT.P10 TRUE COPY OF THE APPLICATION DT.10.12.99 FILED BY THE PETITIONER.

EXT.P11 TRUE COPY OF THE JUDGMENT DT. 7.7.00 IN O.P.339/2000 OF THIS HON'BLE COURT.

EXT.P12 TRUE COPY OF THE JUDGMENT DT.10.7.01 IN W.A.1926/2000 OF THIS HON'BLE COURT.

EXT.P13 TRUE COPY OF THE LETTER DT.30.10.01 ISSUED BY THE 2ND RESPONDENT.

EXT.P14 TRUE COPY OF THE ORDER DT. 20.12.01 OF THE OFFICER IN CHARGE CMP RECORDS.

EXT.P15 TRUE COPY OF THE REPLY DT. 16.3.02 ISSUED BY THE 2ND RESPONDENT.

RESPONDENTS EXTS:

EXT.R1(a) TRUE COPY OF THE REPORT OF THE COURT OF INQUIRY DT.20.3.1972.

EXT.R1(b) TRUE COPY OF THE PENSION PAYMENT ORDER DT. 23.2.1973.

EXT.R1(c) TRUE COPY OF THE ORDER DT. 20.12.2001 ISSUED BY OFFICER-IN-CHARGE CMP RECORDS.

EXT.R1(d) TRUE COPY OF THE LETTER DT. 24/27-12-2001 ISSUED BY THE SENIOR RECORDS OFFICER, OIC RECORDS.

EXT.R1(e) TRUE COPY OF THE LETTER DT. 27.1.1999 ISSUED BY ARMY HEADQUARTERS.

Antony Dominic, J.
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O.P.No.32573 of 2002
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Dated this the 28th day of March, 2007.

JUDGMENT

Widow of late Antony P.D., who was a Naik in Corps of Military Police is the petitioner. Late Antony P.D. entered Military service on 29.3.1957 and as a result of an accident, which took place on 2.12.1971, he died at the Military Hospital, Pathankot. Long thereafter, some time in November 1999, the petitioner came to know that the Central Government had sanctioned a grant of Rs.50,000/- each from the Army Central Welfare Fund to the next of kin of the Soldiers, who were killed in action during Indo-Pak conflict of 1971. Claiming to be a war widow, the petitioner applied for the benefits enclosing necessary documents supporting her eligibility for the same. It is stated that the request made by her was rejected by Ext.P8 and was this challenged before this Court in O.P.No. 339 of 2000. After hearing arguments of counsel for the respondents therein, who are impleaded in this case also, this Court disposed of the Original Petition

by Ext.P11 judgment, setting aside Ext.P8 rejecting her application on the ground that the Army Welfare Fund had extended the benefit of welfare to war widows only. In that judgment, this Court relied on Ext.P4 certificate dated 29.3.1999 issued by the third respondent, which is to the following effect:

> "This is to certify that Smt.ELSY PI holder of IC No.KER 12/002787 is the wife of No.6868365 L/NK P.D. Antony who was killed in Indo-Pak conflict on 02 Dec. 1971.
>
> This certificate is issued for the purpose of producing before the Sub Treasury officer, Mattancherry in connection with her arrears of pension."

Accordingly, this Court directed the second respondent to reconsider the matter and pass fresh orders expeditiously.

2. Respondents 1 and 2 carried the matter in appeal in W.A.No.1926 of 2000. The Writ Appeal was considered by a Division Bench of this Court and was dismissed by Ext.P12 judgment dated 10th July, 2001. Paragraph 2 of Ext.P12 judgment is extracted below for reference:

> "We do not find any reason to interfere with the order of the learned single judge. Learned counsel for the appellant submitted that the accident

> occurred when the deceased was travelling on a motor bike. It is in evident that the deceased was travelling in connection with discharge of his duties as a soldier. He had not gone on sight seeing expedition. One cannot say that a person died while he was riding a motor cycle when he was discharging his official duty is none the less a person who had died in the battle field. This person was riding a motor cycle in connection with the defence operation at the war front. It is very unfortunate that such purile defences are urged by the defence to deny a paltry sum that might ultimately paid to a widow whose husband sacrificed his life in connection with defence operation. The factum of the death is not disputed, that he died during duty hours and that he was in full uniform are all not in dispute. Such conduct of the Department is capable of sending wrong message to the people. Such contentions, will only act negatively in the mind of the people to co-operate with defence activities of the country."

Even thereafter, Exts.P14 and P15 were issued once again rejecting her claim. In Ext.P14 reasons assigned are that the petitioner is not a war widow and that her husband died in a motor cycle accident and not in the Indo-Pak conflict. The other reason stated is that the certificate relied on by this Court and is also produced Ext.P4 in this

Original Petition was issued by Zilla Sainik Welfare Office, Ernakulam at their own and without consulting the competent authority, viz., CMP Records. Ext.P14 was followed by Ext.P15, again intimating the counsel for the petitioner reiterating the stand in Ext.P14. It is seeking to quash Exts.P8 and P14 and for a declaration that the petitioner, being a war widow, is entitled to get all the benefits which are being given to war widows that this Original Petition has been filed by the petitioner.

3. In the counter affidavit filed by the respondents, they are reiterating the ground of rejection as mentioned in Exts. P14 and P15.

4. The main dispute raised for negativing the claim of the petitioner is that she is not a war widow. This issue has already been considered by this Court in Exts.P11 and P12 judgments, where this Court has found that the petitioner is a war widow. Once such a finding has been entered by this Court and since such a finding has attained finality, it is not open to the respondents to overrule the same and enter a finding which is contradictory. In view of the inter party binding judgments with the finding as above, namely, Exts.P11 and P12, the petitioner has to be treated as a war widow and she will also be entitled to consequential benefits.

5. Accordingly, I declare that being a war widow petitioner is

entitled to the benefits which are extended to war widows, including the benefit claimed by her and refused by Exts.P14 ans P15 Resultantly, Exts. P14 and P15 will stand quashed and the respondents are directed to extend all the benefits that are due to the petitioner.

6. Since this Original Petition has been filed by the widow of a soldier, who sacrificed his life for the country way back in 1971 and is knocking all doors for assistance, urgency in the settlement of her claims need not be elaborated. In view of this, I direct that the benefits that are consequential to this judgment should be quantified and extended to the petitioner, within three months from the date of receipt of a copy of this judgment. The petitioner is directed to serve a copy of this judgment on respondents 1 and 2 for compliance.

Original Petition is allowed. No order as to costs.

Antony Dominic
Judge.

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